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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ROBERT BURKE,

Plaintiff and Appellant,

v.

SANTA BARBARA POLICE
DEPARTMENT, et al.,

Defendants and Respondents.

2d Civil No. B215125
(Super. Ct. No. 1302852)
(Santa Barbara County)

Robert Burke appeals from the judgment of dismissal entered after the trial court sustained respondents' demurrer.¹ Because appellant has disregarded the rules of appellate procedure and has failed to carry his burden of establishing reversible error, we affirm.

Factual and Procedural Background

In September 2008 appellant filed a complaint against respondents for violation of various constitutional and statutory provisions. The complaint alleged that the Santa Barbara Police Department "had [appellant's] car towed and impounded, stolen and held captive, kidnapped and held for ransom." The complaint further alleged, inter alia, that

¹ On August 26, 2009, this court dismissed the appeal as to respondents BJ's Turnpike Towing, Inc. and David Patterson. The remaining respondents are the Santa Barbara Police Department, Greg Hons, and Kathryn Denlinger. All references in this opinion to respondents are to the remaining respondents.

the "amount of money to get the car out of the impound" constituted cruel and unusual punishment and that respondents Greg Hons, a police officer, and Kathryn Denlinger, an administrative hearing officer, had violated appellant's rights to equal protection and due process. In addition to seeking damages, appellant sought the return of his car.

The trial court sustained respondents' demurrer with leave to amend the complaint within 30 days. Because appellant failed to timely file an amended complaint, the trial court dismissed the action.

Discussion

The opening brief filed by appellant violates the rules of appellate procedure. It contains no statement of facts with supporting citations to the record. California Rules of Court, rule 8.204(a)(2)(C) requires that the opening brief "[p]rovide a summary of the significant facts limited to matters in the record." Rule 8.204(a)(1)(C) requires that "any reference to a matter in the record" be supported "by a citation to the volume and page number of the record where the matter appears." "It is the duty of counsel to refer the reviewing court to the portion of the record which supports appellant's contentions on appeal. [Citation.] If no citation 'is furnished on a particular point, the court may treat it as waived.' [Citation.]" (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.)

Appellant's opening brief contains no intelligible legal argument with supporting citations to relevant authority. "The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment. It is entitled to the assistance of counsel. Accordingly every brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration." [Citation.] [¶] It is the duty of appellants' counsel, not of the courts, 'by argument and the citation of authorities to show that the claimed error exists.' [Citation.]" (*Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1050.) "[I]t is not this court's function to serve as [appellant's] backup appellate counsel" (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 546.)

Appellant's in propria persona status does not excuse his failure to follow the rules of appellate procedure. "When a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys [citations]. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney [citation]." (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639, fn. omitted.)

Appellant's contentions on appeal are forfeited. We presume that the trial court acted properly in sustaining the demurrer and dismissing the action. " 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Finally, we have considered appellant's statements at oral argument. His candor and admission of some mental difficulty do not, however, warrant our granting of the relief requested.

Disposition

The judgment is affirmed. Respondents shall recover their costs on appeal.

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YEGAN, J.

We concur:

GILBERT, P.J.

COFFEE, J.

James W. Brown, Judge
Superior Court County of Santa Barbara

Robert Burke, in pro per, Appellant.

Stephen P. Wiley, City Attorney, City of Santa Barbara, for Respondents.